

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

JOHN GALLINA,

DOCKET NO.: CR-95-438 (S-1)  
Brooklyn, New York  
December 19, 1995  
12:00 p.m.

Defendant

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING

BEFORE THE HONORABLE RAYMOND J. DEARIE  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: JO ANN NAVICKAS, ESQ.  
U.S. Attorney's Office  
225 Cadman Plaza East  
Brooklyn, NY 11201

For the Defendant: SCOTT YALE AUSTER, ESQ.  
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John Gallina, the Defendant, Sworn

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EXHIBITS

5

Marked Entered

6

C-8 Plea Agreement

12

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K. Rusin

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1                   THE CLERK: United States of America versus John  
2 Gallina, docket number 95-CR-438 (S-1). Counsel, please state  
3 your appearances for the record.

4                   MS. NAVICKAS: Jo Ann Navickas for the Government.

5                   MR. AUSTER: Scott Auster for the defendant. Good  
6 morning, Your Honor.

7                   THE COURT: Good morning.

8                   MR. AUSTER: Good afternoon, actually.

9                   THE COURT: Good morning. Folks, are we ready to  
10 proceed?

11                  MS. NAVICKAS: Yes, Your Honor.

12                  MR. AUSTER: Yes, Your Honor.

13                  THE COURT: I understand you've arrived at a  
14 disposition?

15                  MR. AUSTER: Yes.

16                  THE COURT: All right. Swear the defendant.

17                  THE CLERK: Please raise your right hand.

18                  JOHN GALLINA, THE DEFENDANT, SWORN

19                  THE COURT: Mr. Gallina, I have to ask you a number of  
20 questions, as I'm sure Mr. Auster has told you. If you don't  
21 understand any of my questions, if I don't make myself clear to  
22 you, don't hesitate to tell me that, and I'll do my best to  
23 clarify the question, all right, sir?

24                  THE DEFENDANT: Okay.

25                  THE COURT: And if you wish to confer with counsel at



1       any time, simply ask me, and I'll give you whatever time you  
2       need to confer, privately if necessary, with Mr. Auster, all  
3       right, sir?

4                  THE DEFENDANT: Okay.

5                  THE COURT: You should also bear in mind as we proceed  
6       that you are now under oath. That means that your answers to my  
7       questions must be truthful. If they were not in any material  
8       way, you could subject yourself to further prosecution for the  
9       offense of perjury, which is lying while under oath. Do you  
10      understand that?

11                 THE DEFENDANT: Okay, yes.

12                 THE COURT: All right.

13          BY THE COURT:

14          Q       How old are you, sir?

15          A       Thirty two.

16          Q       And what's your full name?

17          A       Giovanni Gallina.

18          Q       And how far did you get in school?

19          A       I did it in Italy.

20          Q       You did it in Italy. How much did you do in Italy?

21          A       About eight years.

22          Q       About eight years. Do you read and write in Italian, of  
23       course?

24          A       Um hmm.

25          Q       How about English?



1 A Nope, just a real little bit.

2 Q All right. Do you have any difficulty understanding me?

3 A No, I understand.

4 THE COURT: Mr. Auster, have you had any language  
5 difficulties with your client?

6 MR. AUSTER: None whatsoever, Judge.

7 THE COURT: No concern about an interpreter or any of  
8 that?

9 MR. AUSTER: No, just speak — he has to speak a  
10 little slower, and I typically speak a little slower, just to  
11 make sure we're understood.

12 THE COURT: Okay.

13 BY THE COURT:

14 Q If there's anything I say that is not crystal clear to you  
15 — this is an important proceeding, Mr. Gallina; I don't have to  
16 tell you that — tell me, —

17 A Okay.

18 Q — so we can make sure that you understand everything that  
19 is being said. You certainly don't appear to have any  
20 difficulty following me. Are you currently or have you recently  
21 been under the care of a physician or psychiatrist?

22 A No.

23 Q Have you, in the last 24 hours, had any pills, drugs,  
24 alcohol, anything of that sort?

25 A No.



1 Q Have you ever had a problem with drugs or alcohol, —

2 A Yeah.

3 Q — substance abuse?

4 A Yeah, cocaine.

5 Q How long ago?

6 A I used to do it for like five or six years.

7 Q Five or six years?

8 A Until I got arrested.

9 Q When did you stop?

10 A When I got arrested.

11 Q I see. And since that time —

12 A Yes, sir.

13 Q — you've been able to steer clear of it?

14 A Once in a while.

15 Q Um hmm. Are you able to concentrate on what I'm saying to  
16 you? Are you able to concentrate on what I'm saying to you?

17 A Yeah, I understand what — I understand.

18 THE COURT: Have you, Mr. Auster, at any time had  
19 difficulty communicating with him for any reason?

20 MR. AUSTER: No, Your Honor. No.

21 THE COURT: Are you satisfied that he understands the  
22 rights he'll be waiving by pleading guilty?

23 MR. AUSTER: Yes.

24 THE COURT: Is he, in your judgment, competent to  
25 proceed and capable of understanding the nature of these



1 proceedings?

2 MR. AUSTER: Yes.

3 BY THE COURT:

4 Q Are you satisfied, Mr. Gallina, with the representation  
5 that Mr. Auster has provided to you in this case?

6 A Yes.

7 Q Do you wish to have him continue in his role as your  
8 attorney?

9 A Yes.

10 Q All right. You have, of course, an absolute right to  
11 continue in your plea of not guilty. You understand that, don't  
12 you?

13 A Yeah.

14 Q No one could make you — excuse me. No one can make you  
15 plead guilty, not your attorney, not the United States Attorney.  
16 You have an absolute right to plead not guilty, even if you are  
17 guilty. It would be entirely proper and appropriate exercise of  
18 your rights to put the Government to the burden of proving your  
19 guilt. Do you understand that?

20 A Yes.

21 Q Okay. In fact, if you were to continue to plead not  
22 guilty, you'd be entitled to a speedy and public trial, by jury,  
23 with the assistance of counsel, on the charges reflected in the  
24 indictment. Do you understand that?

25 A I didn't get it.



(Off the record discussion between Defendant and Counsel)

**THE DEFENDANT:** Yeah, I understand.

3 THE COURT: All right.

4 BY THE COURT:

5 Q At trial, you'd be presumed innocent, as I would instruct  
6 the jury. The Government would have to overcome this  
7 presumption of innocence and prove you guilty by competent  
8 evidence and beyond a reasonable doubt. You would not be  
9 required to prove that you were innocent. In fact, you wouldn't  
10 be required to prove anything. You could sit back, do nothing,  
11 say nothing, simply put the Government to the burden of  
12 attempting to satisfy the jury of your guilt, as I say, beyond  
13 a reasonable doubt. Do you understand that, sir?

14 A Yes.

15 Q That means, as a practical matter, that if the Government  
16 were to fail, technically or otherwise, to meet that burden, the  
17 jury would be required under my instructions to find you not  
18 guilty. Do you understand that?

19 A Yes.

20 Q Now, in the course of any trial, witnesses for the  
21 Government would have to come here to court and testify under  
22 oath, in your presence, and in the presence, obviously, of your  
23 attorney. You would have the right, therefore, to confront each  
24 of these witnesses face to face here in open court. You would  
25 have the right, through counsel, to cross examine each of the



1       Government's witnesses, and, when appropriate, to object to  
2       evidence offered by the Government. Do you understand that?

3       A      Yes.

4       Q      You would have the right to offer evidence in your own  
5       defense, and in that regard, you'd have the right to compel the  
6       attendance of witnesses and the production of potential evidence  
7       through the issuance of judicial process, something we commonly  
8       refer to as a subpoena. Do you understand that?

9       A      Yes.

10      Q      You would have the right to testify at trial. You would  
11      also have a right not to testify at trial. No one could make  
12      you testify, not your attorney, not the United States Attorney,  
13      not the Court. That is your decision, and if you decided, in  
14      consultation with counsel, to avail yourself of your right not  
15      to testify, and if counsel requested it, as he very well might,  
16      I would instruct the jury in the strongest possible terms that  
17      under no circumstances could they, the jury, hold your decision  
18      against you. Do you understand that?

19      A      Yes.

20      Q      All right. Now, if you plead guilty, and I accept your  
21      plea, you'd be giving up these rights that I've just outlined.  
22      Do you understand that?

23      A      Yes.

24      Q      You'll give them up forever. Do you understand that?

25      A      Yes.



1       Q     You give up, among others, your constitutional right to a  
2 trial. There will be no trial. Do you understand that?

3       A     Yes.

4       Q     With the possible exception of sentence, which I'll explain  
5 shortly, there is no right to an appeal. I will simply enter a  
6 judgment of guilty based upon your plea of guilty, based upon  
7 what you tell me. Do you understand that?

8       A     Yes.

9       Q     And finally, you should understand that before I can  
10 actually accept your plea, I am required under the Federal Rules  
11 of Criminal Procedure to satisfy myself that you are, in fact,  
12 guilty of the offense charged. To do that, momentarily I will  
13 ask you a few questions. In responding to my questions, you  
14 should understand you have — you'll be called upon, I should  
15 say — excuse me just one second. [Pause] You'll be called  
16 upon to acknowledge here in open court your guilt, and in doing  
17 that, you'll give up your right to remain silent and your  
18 constitutional right not to incriminate yourself. Do you  
19 understand that?

20      A     Yes.

21      Q     Are you willing, then, to give up your right to a trial and  
22 these other rights that I have just explained?

23      A     Yes.

24      Q     You should also understand, Mr. Gallina, that by pleading  
25 guilty, you give up — again, forever — any opportunity that



1       you might otherwise have to challenge the Government's case, to  
2       seek the suppression of evidence, dismissal of charges, or any  
3       other relief that the law might otherwise entitle you to by  
4       legal motion to the Court. Do you understand that?

5       A      Yes.

6       Q      To the extent that motions have already been filed on your  
7       behalf, they are withdrawn by virtue of your guilty plea. Do  
8       you understand that?

9       A      Yes.

10      Q      I have a copy of an agreement, the original of which I  
11     assume has been marked as Court Exhibit 1. If it hasn't, please  
12     do so mark it. Excuse me a second.

13                  (Off the record discussion between the Court and Clerk)

14                  THE COURT: I'm sorry.

15                  BY THE COURT:

16      Q      First of all, —

17                  THE CLERK: It's got to be executed.

18                  THE COURT: Okay. [Pause] The record should reflect  
19       that the defendant is, at this moment, executing the plea  
20       agreement. It will be marked as Court Exhibit 7 to correspond  
21       with Mr. Gallina's position on the list of — no, this doesn't  
22       work. Why seven?

23                  THE CLERK: It's number seven on 438.

24                  THE COURT: Four thirty eight? Not seven on my 438.  
25       He's eight. Is this a superseder?



1 MS. NAVICKAS: Your Honor, it is a superseder.

2 THE COURT: Ah. Well, that may be —

3 MS. NAVICKAS: The underlying is 1236.

4 THE COURT: Oh, 438 is a superseder to 1236?

5 MS. NAVICKAS: Yes.

6 THE COURT: I have him as eight. One, two, three,  
7 four, five, six, seven, eight. Correct, or not?

8 MS. NAVICKAS: The eighth defendant, yes.

9 THE COURT: Mr. Soric has a little difficulty with the  
10 first ten — after he gets beyond ten, he's fine, but —

11 MS. NAVICKAS: The fourth defendant has been  
12 dismissed. I don't know whether that plays any part.

13 THE COURT: Don't speak up in his defense.

14 MS. NAVICKAS: Okay.

15 THE COURT: The man is eighth on the indictment. It  
16 will be Court Exhibit 8. Fair enough.

17 (Court Exhibit 8, Plea Agreement, Marked)

18 BY THE COURT:

19 Q Now, you signed this moments ago, Mr. Gallina. Have you  
20 carefully reviewed it with your attorney, the agreement?

21 A Yeah, yeah.

22 Q Do you understand this is an important document for you?

23 A Yes.

24 Q Are you fully satisfied that you understand everything  
25 that's contained in the agreement?



1 A Yes.

2 Q Do you have any questions of the Court or of your attorney  
3 about anything contained in the agreement?

4 A No.

5 Q As far as you understand, is the agreement complete, in  
6 that is your agreement with the United States Attorney fully  
7 reflected in writing in plea agreement Court Exhibit 8? Is it  
8 all in writing?

9 A Yeah.

10 Q Okay.

11 THE COURT: Mr. Auster, can you confirm that?

12 MR. AUSTER: Yes, Your Honor, it does.

13 THE COURT: And Ms. Navickas?

14 MS. NAVICKAS: Yes, Your Honor.

15 THE COURT: All right. We'll come back to that  
16 momentarily. This is Count 26. It charges in or about and  
17 between October 1992 and November 16, 1994, both dates being  
18 approximate and inclusive, within the Eastern District of New  
19 York and elsewhere, the defendants Salvatore Candella, Giuseppe  
20 Bonella, John Gallina, and Antonia Gambino, together with  
21 others, knowingly and intentionally conspired to distribute and  
22 to possess with intent to distribute heroin and cocaine,  
23 Schedule I and Schedule II narcotic drug controlled substances,  
24 in violate of Title 21 United States Code section 841(a)(1).

25 BY THE COURT:



1 Q Have you reviewed this charge, Mr. Gallina, with your  
2 attorney?

3 A Yes.

4 Q Do you feel confident that you understand what it is that  
5 you're charged with in Count 26?

6 A Yes.

7 Q You are charged with a conspiracy. Tell me what your —  
8 what is your understanding as to the nature of a conspiracy?  
9 What is a conspiracy?

10 A That I was dealing drugs, heroin and cocaine.

11 Q A conspiracy is an agreement, an illegal agreement, with at  
12 least one other person, to do something the law forbids. In  
13 this instance, that something is to distribute or possess with  
14 intent to distribute heroin and cocaine. But the crime is the  
15 agreement itself. Once you agree to do that, even if you never  
16 distributed or possessed an ounce thereafter, once you agreed,  
17 that crime is complete. Do you understand that?

18 A Yes.

19 Q Okay. Now, if I can refer back momentarily to the plea  
20 agreement, and review with you, first of all, the maximum  
21 sentence you face pursuant to statute, you face a maximum term  
22 of imprisonment, as your agreement indicates, of 20 years. Do  
23 you understand that?

24 A Yes.

25 Q You face a period of at least three years' supervised



1 release, at least three years. There is no maximum. I could  
2 put you on supervision for the rest of your life. Supervised  
3 release is a period of supervision that begins to run when you  
4 are released from federal custody. If you were to violate the  
5 terms and conditions of your supervised release at any point in  
6 time during the period of supervision, you could be returned to  
7 prison for the period of supervision, and that is without any  
8 credit being given to you for the time that you've spent at  
9 liberty under supervision. Do you follow that?

10 A Yes.

11 Q Have you talked to Mr. Auster about this?

12 A Yes.

13 Q Okay. Now, I should note in your case you are not an  
14 American citizen, is that correct?

15 A No.

16 Q No, you are not.

17 A I'm just — I have a green card. Resident.

18 Q Okay. There is a strong possibility, as a result of your  
19 conviction in this case, that you will be deported upon your  
20 release from custody.

21 A Yes.

22 Q Nevertheless, the sentence will include a period of at  
23 least three years' supervised release. Do you follow?

24 A Yes.

25 Q So, for example, if you were to return illegally to the



1       United States after deportation, that would be a violation of  
2       the terms and conditions of your supervised release, and under  
3       the terms of my sentence in this case, you could be returned to  
4       prison for that period of supervision. Do you follow?

5       A      Yes.

6       Q      Okay. You also face a fine authorized by statute in an  
7       amount not to exceed \$1 million. A special assessment of \$50  
8       will also be included, as is required by law. Do you  
9       understand?

10      A      Yes.

11      Q      All right. Are you aware, sir, that there are certain  
12       sentencing guidelines that the Court is obligated to apply in  
13       determining an appropriate sentencing range in your case?

14                  (Off the record discussion between Defendant and Counsel)

15                  THE DEFENDANT: Yes.

16          BY THE COURT:

17          Q      I'm sorry?

18          A      Yeah.

19          Q      Is it fair to say that counsel has given you some idea as  
20       to how you might fare under the guidelines?

21                  (Off the record discussion between Defendant and Counsel)

22                  THE DEFENDANT: Yes.

23          THE COURT: Okay. Could you give me some rough idea  
24       what the base offense level would calculate out to be?

25          MS. NAVICKAS: Your Honor, I don't believe that we've



1       reached 100 percent agreement. But if you do look at the  
2       complaint, —

3                 THE COURT: Just some idea of your current thinking.

4                 MS. NAVICKAS: — in at least one transaction we're  
5       talking about in the range of 250 to 300 grams, so at least as  
6       to that one transaction we're talking about a level 26, which is  
7       63 to 78 months, which would be reduced by three levels to 46 to  
8       57 months, although there are some other complications, and we  
9       have had discussions with defense counsel.

10               THE COURT: Right.

11               BY THE COURT:

12               Q       Well, that's not binding on the U.S. Attorney. You must  
13       understand that. It's certainly not binding on me. It gives  
14       you some idea as to what she is thinking at this time, to  
15       supplement, if you will, your attorney's — your discussions  
16       with your attorney. Now, the point of the matter is I cannot  
17       tell you today what sentencing range I will compute. I don't  
18       know enough about you, and I know relatively little about your  
19       role in this particular matter.

20               I won't, therefore, be in a position to do that until  
21       after I have received the presentence report, an important  
22       document prepared by the Probation Department with your input,  
23       counsel's input and guidance, as well as the United States  
24       Attorney's and her investigative agencies. That report will  
25       contain information about you, the offense, any relevant



1 conduct. It will contain personal background and history about  
2 you. It will also contain the Probation Department's  
3 recommended sentencing range under the guidelines.

4 When I receive that report — after, by the way,  
5 you've seen it — I will hear from counsel, apply the guidelines  
6 as I understand them, resolve any material factual disputes that  
7 may exist between the parties, and calculate a sentencing range.  
8 Ordinarily, I am required to sentence you at some point within  
9 that range. Do you understand that?

10 A Yes.

11 Q I do have some authority — limited authority, I should  
12 emphasize — to impose a sentence that is either above or below  
13 the range. We refer to these as departures, and an upward  
14 departure would be a sentence, a more severe sentence, above the  
15 guidelines range; a downward departure, a more lenient sentence  
16 below the guidelines range. As I told you earlier, there are  
17 conditional rights of appeal, possible rights of appeal, that  
18 you enjoy.

19 One is if I upwardly depart in your case, Mr. Gallina,  
20 you would have the right to appeal the sentence to a higher  
21 court, and the fees and expenses associated with that appeal  
22 would be paid by the Court pursuant to the terms and authority  
23 of the Criminal Justice Act. Do you understand that?

24 A Yes.

25 Q You should understand the U.S. Attorney has a comparable or



1 parallel right to appeal a downward departure. There's a second  
2 possible right of appeal, and that has to do with the actual  
3 calculation of the guideline sentencing range. If you or Mr.  
4 Auster thinks that I have made a mistake, legally or factually,  
5 in calculating the guidelines range to your detriment, you may  
6 appeal the sentence on that basis, as well. Do you understand  
7 that?

8 A Yes.

9 Q And here, too, the Government enjoys a comparable right of  
10 appeal in the event they feel that their interest has been  
11 adversely affected by an apparent error in the Court's  
12 calculation. Do you understand that?

13 A Yes.

14 Q I should emphasize to you that if you feel that I've made  
15 a mistake adverse to your interest in calculating the guideline  
16 sentence, you will not be permitted on that basis alone to  
17 withdraw your plea of guilty. I should also emphasize that if  
18 sentenced to a term of imprisonment, as appears quite likely in  
19 light of the nature of the offense, you will not be released on  
20 parole. Parole has been abolished for guideline sentences. Do  
21 you understand that?

22 A Yes.

23 Q Do you have any questions about any of the material we've  
24 covered to this point?

25 A No.



1 Q Are you ready to plead?

2 A Yes.

3 THE COURT: Any reason, Mr. Auster, as to why we  
4 should not proceed?

5 MR. AUSTER: No, Your Honor.

6 THE COURT: Ms. Navickas?

7 MS. NAVICKAS: No, Your Honor.

8 BY THE COURT:

9 Q What is your plea to Count 26 of indictment 95-CR-438,  
10 guilty or not guilty?

11 A Guilty.

12 Q Are you pleading guilty voluntarily?

13 A Yes.

14 Q Of your own free choice?

15 A Yeah.

16 Q Has anyone put pressure or —

17 A No.

18 Q — forced you in any way to plead guilty?

19 A No.

20 Q Has anybody made any promises to you that are not reflected  
21 —

22 A No.

23 Q — in the plea agreement?

24 A No.

25 Q Has anybody given you any assurance, Mr. Gallina, as to



1 what I will do on sentence?

2 A No.

3 Q Finally, then, sir, it is alleged in Count 26 that you and  
4 others conspired to distribute and to possess with intent to  
5 distribute heroin and cocaine during the period October '92  
6 through November 1994. Did you do that?

7 A Yes.

8 Q Tell me about it.

9 A Me to tell you what happened?

10 Q Yes, sir.

11 A I was talking to Mr. Candella, and he asked me that he  
12 wanted — he wanted to buy some heroin and whatever, but it  
13 never happened.

14 Q He offered to sell you some heroin?

15 A No, he asked me that he wanted to buy it. He wanted to buy  
16 it.

17 Q He wanted to buy.

18 A Yeah.

19 Q And did you —

20 A And I told him as soon as I have, I give it to him, but I  
21 never did.

22 Q This conspiracy allegedly existed for slightly in excess of  
23 two years. Was this an ongoing kind of relationship?

24 A No, couple times.

25 (Off the record discussion between Defendant and Counsel)



1                   THE DEFENDANT: Just — I gave him a sample one time.  
2   That's — I was given the stuff. I never sold it to him. I  
3   never did.

4   BY THE COURT:

5   Q   So this involves one sample?

6   A   Um hmm. Yeah, but then I give another one to Bonella.

7   Q   Uh huh. And were you — how were you doing this? Were you  
8   supplying them and they were selling it and splitting the  
9   proceeds? What was —

10   A   I never did it. Just a sample.

11   Q   So only two samples.

12   A   Exactly I don't remember. But what I'm thinking it's a  
13   couple samples.

14                   (Off the record discussion between Defendant and Counsel)

15                   THE DEFENDANT: Your Honor, I got a sample from Queens  
16   from Mr. Gallina, Giuseppe, and then I bring it to Candella, and  
17   we never made the deal. Then I give another one to Bonella.

18   BY THE COURT:

19   Q   What was the deal to have been?

20   A   What do you mean? I mean —

21   Q   Did you have an agreement with Mr. Canella — Candella, I  
22   mean?

23   A   Well, he told me that he wanted to buy — whatever — he  
24   didn't — I gave him the sample. He wanted to know when I would  
25   bring it to him, so I told him I'll let you know, when I have it



1 I'll call you.

2 Q And who'd you get it from, Bonella?

3 A No, Giuseppe Gallina.

4 Q Uh huh. And were you —

5 THE COURT: Ms. Navickas, I mean, we're not even — I  
6 don't know what I have here.

7 MS. NAVICKAS: Your Honor, —

8 THE COURT: Do I have a conspiracy, or a buy sell  
9 agreement? I just don't know.

10 MS. NAVICKAS: Your Honor, over a period of time, Mr.  
11 Candella was attempting to get supplies of cocaine and heroin  
12 from various sources. At some point, he spoke with Mr. Gallina,  
13 either to Mr. Gallina personally or through intermediaries. If  
14 you look at the complaint, in October of '93, Bonello [phonetic]  
15 and Mr. Gallina showed up and met with the — with Mr. Candella  
16 and the cooperating witness. There was a discussion, and Mr.  
17 Bonella [phonetic] gave Candella two samples at that time.

18 One was a supply of heroin that — he could get 300  
19 grams of it. The other was a supply that he could get 250 grams  
20 of heroin. As time went on, Mr. Candella would also continue to  
21 approach Mr. Gallina about obtaining more heroin, and they had  
22 other discussions, and my — if you look at the complaint,  
23 there's another discussion in March about a possible sale, but  
24 Mr. Candella I don't believe was as specific, necessarily,  
25 always as to which quantity he wanted. He basically wanted



1       heroin in whatever quantities were available.

2           So specifically, with respect to the guidelines range  
3       that I talked about, I was referring to the October of '93 count  
4       in the complaint, and the discussion was about 250 to 300 grams  
5       of heroin at that specific time.

6 BY THE COURT:

7 Q       So you had an agreement with Mr. Candella that you would  
8       supply him with a sample as a part of an arrangement to sell him  
9       up to 250 grams?

10 A       Yes.

11 Q       And your source for that sample was who?

12 A       Where I get it from?

13 Q       Yes.

14 A       Giuseppe Gallina.

15 Q       So you and Mr. —

16 A       We call him Felipe, because I get confused with him.

17 Q       You and Giuseppe Gallina were providing a sample in the  
18       hopes that he would then make a purchase and you could —

19 A       No, he gave it to me. He give it — I don't know where he  
20       got it from. He has it. He gave it to me, and then I bring for  
21       Candella.

22 Q       Uh huh. And then if Candella had liked it, he would have  
23       then purchased it?

24 A       He liked it, but I never — we never happen to make the  
25       deal.



1 Q And this happened a couple of times?

2 A With Candella, only one time, that time. Then he — the  
3 first time he see me, I give him. The second time, then — that  
4 he wanted to know why two weeks I never showed up to give it to  
5 him. I says I don't have it yet, when I have I give it to you.

6 Q Is it fair to say that you and Giuseppe Gallina were more  
7 successful with other purchasers?

8 (Off the record discussion between Defendant and Counsel)

9 THE DEFENDANT: No. I only get samples, I give it to  
10 Joe, whatever, but I never sold anything to other people.

11 (Off the record discussion between Defendant and Counsel)

12 BY THE COURT:

13 Q So you agreed with Giuseppe Gallina and with Mr. Candella  
14 that you would — when these substances were available, that you  
15 would supply them to him, —

16 A Yes.

17 Q — and that he might thereafter make a purchase?

18 A [No audible response]

19 MR. AUSTER: Say yes. Don't just shake your head.  
20 Say yes.

21 THE DEFENDANT: Yes.

22 BY THE COURT:

23 Q Is that right? And presumably, you would have made some  
24 money behind all of this.

25 A If I were to make money on this?



1 Q Yes.

2 A If I would have did it, yes.

3 Q Yes. Right?

4 A Yes.

5 Q Where'd this take place?

6 A Where it took place? It happen on 20th Avenue, 62nd?

7 Q In Brooklyn?

8 A When I give him the —

9 MR. AUSTER: What county?

10 THE DEFENDANT: Oh, Brooklyn.

11 THE COURT: All right. Ms. Navickas?

12 MS. NAVICKAS: Your Honor, we have nothing to add at  
13 this point. We do believe that there were conversations and  
14 there was an agreement, at the very least, in that October '93  
15 deal to supply at least 250 to 300 grams of heroin, and a sample  
16 was produced by Mr. Gallina in connection with that as part of  
17 that agreement.

18 BY THE COURT:

19 Q Is that correct?

20 A Yeah.

21 THE COURT: Based on the information given to me, I  
22 find that the defendant is acting voluntarily, fully understands  
23 his rights and the consequences and possible consequences of his  
24 plea, and that there is a factual basis for the plea of guilty.  
25 I therefore accept the plea of guilty to Count 26 of indictment



1 95-CR-438, and I urge you to cooperate, sir, with the Probation  
2 Department in the preparation of the presentence report.

3 I will return the original plea agreement to the  
4 United States Attorney, Court Exhibit 8, for safekeeping in her  
5 file.

6 MS. NAVICKAS: Thank you, Your Honor.

7 THE COURT: All right. The clerk of the Court should  
8 indicate that motions previously filed for discovery and  
9 inspection, suppressing oral statements, suppressing physical  
10 evidence, are — and for other relief, as indicated in the  
11 notice of motion, is hereby withdrawn. Anything further?

12 MS. NAVICKAS: No, Your Honor.

13 THE COURT: Mr. Auster?

14 MR. AUSTER: No, Your Honor.

15 THE COURT: Thank you, folks.

16 (Pause in proceedings)

17 THE CLERK: July 19th at 9:30.

18 \* \* \* \* \*

19 I, KRISTIN M. RUSIN, do hereby certify that the  
20 foregoing is a true and accurate transcript of the proceeding in  
21 the matter of USA versus Gallina.

22 5-20-96

